



Rebecca W. Arnold, President
Mary May, 1st Vice-President
Sara M. Baker, 2nd Vice-President
Jim D. Hansen, Commissioner
Kent Goldthorpe, Commissioner

May 8, 2019

Mayor David H. Bieter
150 N. Capitol Blvd.
Boise, Idaho 83702

Ms. Dana Zuckerman - Chair
Capital City Development Corporation
121 N. 9th Street, Suite 501
Boise, Idaho 83702

Dear Mayor Bieter and Ms. Zuckerman:

This letter is in regard to the Capital City Development Corporation's ("CCDC") latest Urban Renewal Project/Economic Development District Areas within the City of Boise/Ada County: the Shoreline District Urban Renewal Project Area ("Shoreline Drive Project Area") and the Gateway East Economic Development District Project Area ("Gateway East Project Area"). As we understand it, these two Project Areas were approved by the City of Boise on December 18, 2018 and became effective on January 1, 2019. Additionally, CCDC is in the initial stages of creating a new urban renewal area, the Central Bench Urban Renewal Area ("Central Bench Area"), with an Eligibility Report having been presented and approved by the CCDC Board of Commissioners on April 8, 2019 and Boise City Council on May 7, 2019. The creation of these two Project Areas and the proposal for a third have brought to light several important issues.

First, with respect to the formation of the Shoreline Drive and Gateway East Project Areas and the proposed formation of the Central Bench Area, it appears the boundaries of the Project Areas are very strategically located around ACHD's primary transportation corridors. A prime example is the proposed Central Bench Area and its three (3) subareas, which tracks ACHD's transportation corridors very closely. (See attached boundary map). As is clearly shown from the attached map, the Central Bench Area boundary is a plain attempt to "gerrymander" the project area around ACHD's primary transportation corridors. CCDC's practice in this regard is highly questionable and appears to be inconsistent with the CCDC's statutory purpose. In particular, this effort appears to be a clear attempt to avoid Idaho's laws governing local improvement districts and/or to circumvent ACHD's exclusive jurisdiction over the public rights-of-way within the new District's boundary.

Next, it is our understanding that the Urban Renewal Plans for the two Project Areas and the proposed Central Bench Area include improvements to roads, streets, and public rights-of-way. However, any action by CCDC relating to roadways and rights-of-way within ACHD's jurisdiction must be coordinated with, and approved by, ACHD. As you are aware, ACHD has exclusive jurisdiction over the rights-of-way and roadways within its jurisdiction. Idaho Code §§ 40-1310, 40-1312, 40-1406, 40-1415. For example, § 40-1310 provides:

The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and approve all highways within their highway system, whether directly or by their own agents and employees or by contract.¹

This statutory grant of authority is to be “liberally construed, as a broad and general grant of powers[.]” Idaho Code § 40-1312. In that vein, ACHD’s jurisdiction over highways within Ada County explicitly supersedes conflicting laws:

[A county-wide district] shall specifically be responsible for all county secondary roads and city highways Wherever any provisions of the existing laws of the state of Idaho are in conflict with the provisions of this chapter, the provisions of this chapter shall control and supersede all such laws.

Idaho Code § 40-1406. Thus, while CCDC may have some statutory authority relating the funding and improvement to roads and streets within its urban renewal areas (e.g., Idaho Code §§ 50-2007, 50-2017), its authority may not conflict with, and is superseded by, ACHD’s exclusive jurisdiction over its roadways and rights-of-way. Idaho Code § 40-1406. This is particularly so where (1) CCDC’s authority to create an urban renewal district is subject to the approval of the City of Boise and (2) the City is expressly prohibited from maintaining or supervising any city highways within a county-wide highway district. *Id.* (“[A county-wide highway district] shall be specifically responsible for all . . . city highways No city included within a county-wide highway district shall maintain or supervise any city highways, or levy any ad valorem taxes for the construction, repair or maintenance of city highways.”); *Ada Cnty. Highway Dist. v. City of Boise*, No. CVOC 06-14386*D, 14-15 (4th Judicial Dist. Idaho 2006) (interpreting Idaho Code § 40-1406 and holding that the provision provides ACHD with “exclusive jurisdiction over even the city highways . . .”). Thus, to the extent that CCDC’s Urban Renewal Plans for the Shoreline, Gateway East, and proposed Central Bench Project Areas involve roadways and rights-of-way under ACHD’s jurisdiction, its actions to implement any plan requires express coordination with, and approval from, ACHD so as not to violate Idaho law.

In addition to the jurisdictional issue, ACHD also believes that the current revenue allocation financing for CCDC’s urban renewal areas violates Idaho law. The incremental property tax revenue being used to fund the urban renewal areas are funds made available from property tax revenues levied by ACHD pursuant to statute. Idaho Code § 40-801. And by statute, those funds must be used exclusively for the “construction and maintenance of highways and bridges” within ACHD’s jurisdiction. *Id.* CCDC does not account for the spending of each taxing agency’s incremental funding or how those dollars are spent. What is clear however, is that the use of funds from property taxes levied by ACHD for any purpose other than the “construction and maintenance of highways and bridges” is in direct violation of ACHD’s enabling statute that allows for the collection and expenditure of property taxes. Moreover, the urban renewal revenue allocation financing is contrary to the express limitations of § 40-1406, which specifically prohibits cities from “levy[ing] any ad valorem taxes for the construction, repair or maintenance of city highways. Idaho Code § 40-1406. Where CCDC’s Project Areas (which require the City’s approval) rely on ACHD’s property tax revenues to fund levied by

¹ Idaho Code § 40-1406 incorporates all of the powers and duties provided for in Title 40, Chapter 13 for county-wide highway districts. (“The highway commissioners of a county-wide highway district shall exercise all of the powers and duties provided in chapter 13 of this title”).

ACHD and where CCDC cannot distinguish whether and to what extent its incremental funding dollars are spent on "construction, repair or maintenance" of city highways, there is a further violation of Idaho law.

Idaho's highway district statutes (Idaho Code, Title 40, Chapters 13 and 14) existed prior to the enactment of the Local Economic Development Act, as did the statutory provisions limiting the purposes for which property taxes levied by ACHD could be spent. Under long-established rules of statutory interpretation, the Legislature was aware of the law and its funding limitations when it enacted the Local Economic Development Act. It could have created an exception to the funding limitations at that time, but it did not. Therefore, the express statutory limitations on the uses for ACHD's property tax levies remain valid and in effect—as does the express requirement that the provisions of Title 40, Chapter 14 "shall control and supersede" all conflicting laws. Idaho Code § 40-1406. If Idaho's laws are read properly and in context, the incremental property tax revenues collected by CCDC that would have otherwise gone to ACHD must be used for the statutorily-required purpose of construction and maintenance of highways and bridges.

This is an important issue to the citizens of Ada County because the use of property tax dollars for any purpose other than the statutorily mandated purpose of "construction and maintenance of highways and bridges" deprives ACHD of much-needed revenue to appropriately maintain the rights-of-way and roadway infrastructure in Ada County. The revenues being collected by CCDC from ACHD's property tax levies are substantial, and the lack of those funds in ACHD's coffers cause significant impacts to the number and scope of road projects that can be undertaken in Ada County. In concrete figures, the amount of property tax revenues received by ACHD per year is approximately 35% of ACHD's total revenues. All other sources of revenue are, like the property tax revenues, constitutionally and/or statutorily limited to the construction, reconstruction, or maintenance of roadways. The amount of ACHD lost property tax revenues being transferred to CCDC has totaled nearly \$1 million per year, not including sums transferred to other urban renewal agencies. For example, in 2018 the property tax base totaled more than \$670,000,000 in the Myrtle River District, and ACHD's lost revenues from that base totaled approximately \$577,000. In the same year, the Westside District's property tax base totaled nearly \$250,000,000, whereas ACHD's lost revenues totaled more than \$213,000. Below is a schedule of ACHD's lost revenues as compared to the base totals for the years 2014 to 2018:

Ada County Urban Renewal Districts

Urban Renewal District	ACHD 2014 Tax Levy Rate		ACHD 2015 Tax Levy Rate		ACHD 2016 Tax Levy Rate		ACHD 2017 Tax Levy Rate		ACHD 2018 Tax Levy Rate	
	Tax Base	0.001093315	Tax Base	0.001090965	Tax Base	0.000955148	Tax Base	0.000923828	Tax Base	0.000951981
Boise CCDC Downtown Central	229 517 916	248 640	263 802 476	266 167	295 650 093	282 390	322 329 693	297 777		
Boise CCDC Myrtle River	309 263 563	334 965	393 473 397	397 001	404 873 327	388 714	544 424 773	502 953	670 507 775	577 965
Boise CCDC Westside	115 723 730	125 365	138 179 695	139 418	156 459 624	149 442	192 462 657	177 747	247 607 059	213 433
Boise CCDC 30th St	9 130 721	9 891	21 457 980	21 650	32 816 221	31 344	46 053 727	42 546	45 275 718	39 027
Garden City, River Front East	12 364 936	13 395	17 760 611	17 920	27 191 890	25 972	38 059 513	35 160	45 127 222	38 899
Mendon Inside City	65 029 232	70 447	73 189 970	73 846	90 385 344	86 331	124 748 196	115 246	149 262 379	126 661
Mendon Outside City	482 418	523	609 004	614	697 966	667	1 909 025	1 764	2 106 879	1 816
Mendon Ten Mile							5 119 950	4 730	35 309 406	30 436
Eagle Inside City	1 123 268	1 217	2 428 527	2 450	1 197 713	1 144	1 524 556	1 408	1 745 551	1 505
Eagle Inside City with Sewer	18 757 495	20 320	25 853 988	26 086	44 161 282	42 161	60 082 703	55 506	83 678 658	72 130
Eagle Outside City	0	0	0	0	6	0	9	0	0	0
Eagle Outside City with Sewer	0	0	0	0	134	0	137	0	85	0
ACHD Portion Total		824,764		945,154		1,006,185		1,234,840		1,103,871

To ACHD, these sums are significant, resulting in fewer roadway projects being constructed for the benefit and safety of the traveling public in Ada County.

As compared to the revenues lost by ACHD, it has continued to invest significant dollars into the roadway infrastructure within the urban renewal districts. For each year since 2014, the total amount invested by ACHD for roadway capital and maintenance costs, using non-property tax revenue sources, is as follows for maintenance costs:

	2014 Lane Miles	2014 Costs	2015 Lane Miles	2015 Costs	2016 Lane Miles	2016 Costs	2017 Lane Miles	2017 Costs	2018 Lane Miles	2018 Costs
Downtown Central	2.60	\$ 19,796.00	2.60	\$ 23,303.80	2.60	\$ 23,264.80	2.60	\$ 25,981.80	2.60	\$ 28,368.00
Myrtle River	21.20	\$ 161,332.00	21.30	\$ 180,911.80	25.60	\$ 229,068.80	26.40	\$ 263,815.20	29.00	\$ 316,390.00
Westside	18.70	\$ 142,307.00	21.10	\$ 189,119.30	22.80	\$ 202,224.80	22.80	\$ 227,840.40	23.20	\$ 253,112.00
30th Street	25.40	\$ 193,294.00	25.40	\$ 227,660.20	25.90	\$ 231,753.20	26.30	\$ 262,815.80	26.30	\$ 286,933.00
Total	67.90	\$ 516,719.00	70.40	\$ 630,995.20	76.70	\$ 686,311.60	78.10	\$ 780,453.30	81.10	\$ 884,801.00

These sums for capital projects are broken down in more detail in the following chart:

Sum of Construction Costs		Column Labels												
Row Labels		30th Street	30th Street Total	Central	Central Total	River Myrtle	River Myrtle Total	Westside	Westside Total	Grand Total				
		FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26
50th St and Fulton Pedestrian Signal							89,628			89,628				89,628
12 St/Jefferson St Curb Extensions								29,334		29,334				29,334
2014 Downtown Boise Implementation								81,650	1,288,345	1,369,995				1,369,995
2015 Downtown Boise Implementation									1,627,261	1,627,261				1,627,261
2016 Downtown Boise Implementation							1,141,890		1,141,890	2,269,151				2,269,151
2017 Downtown Boise Implementation									831,696	1,437,847				1,437,847
2018 Downtown Boise Implementation										287,045	287,045			287,045
2019 Downtown Boise Implementation											615,120			615,120
2020 Street Improvements Main St / State St		4,133		4,133										4,133
30th Street Extension Rainier Ave / State St		1,612,283	(84,596)	947,687										947,687
8th Street Myrtle to River						35,442			35,442					35,442
Avalanche Rd - 30th & 60th - Signal & Banners							7,102		7,102					7,102
Capital Blvd and Main St APS				9,983	9,983									9,983
Federal Ave Capital Maintenance (2017)							432,881		432,881					432,881
Green Stormwater Implementation (2018)							194,983		194,983					194,983
Jefferson St (2014-2017) & 14th St										175,094				175,094
Grand Total		1,616,416	(84,596)	951,820	9,983	35,442	81,628	7,102	1,634,271	2,577,854	80,130	2,515,407	1,084,876	4,000,811

Because of the lost property tax revenues, not only are the funds not being spent on transportation-related projects as required by statute, but these costs are being funded disproportionately by taxpayers located outside the urban renewal district and not by the property owners located within the district. This is particularly so where CCDC's funds are primarily sourced from property tax dollars. Again, this is contrary to Idaho law, and it places an undue burden on property owners who are disproportionately required to pay for transportation projects as compared to property owners located within the urban renewal district.

Despite the significant number of proposed legislative bills during the last five legislative sessions, CCDC appears to be responding with a more aggressive use of its statutory authority. CCDC has approved four (4) urban renewal project areas with the last seven years. Prior to 2012, CCDC had only approved two (2) urban renewal project areas since 1986. Moreover, the recent approval of the Gateway East Project Area is questionable as it is largely an undeveloped desert in southeast Boise.

We question the limits of CCDC's authority in approving the current urban renewal project areas, including the recent efforts to gain approval of the proposed Central Bench Area. There is nothing in the enabling urban renewal statute or legislative history that evidences that the Idaho Legislature intended to give urban renewal agencies the statutory authority to redevelop areas that have never been developed. Moreover, there are constitutional limits in that the redevelopment efforts of an urban renewal agency must be "primarily" for public benefit versus private, and they may not encompass more than 10% of the taxing base by value. We recognize that with the termination of Central District, a considerable amount of taxing base value was removed from what CCDC previously

had encompassed. This likely would justify additional project areas, so long as the new project areas do not exceed the 10% limit on the value of the taxing base within CCDC's jurisdiction. Notwithstanding this issue, CCDC is still obligated to satisfying the statutory requirements for establishing the need for an urban renewal or economic development project area, including the approval of the City of Boise. And it is still subject to the statutory requirements of Title 40, Chapters 13 and 14. Because ACHD does not believe that those statutory requirements can be met without proper coordination with and approval by ACHD, ACHD objects to the creation of recent urban renewal project areas, and it will continue assert its objections to any new project areas.

These are serious issues relating to CCDC's Project Areas and the funding for its Project Areas and need your immediate attention. In the future, the ACHD Board of Commissioners will take a critical look at the funding of those ACHD capitol and maintenance projects that are planned in all CCDC Project Areas. Based upon the foregoing, the ACHD Board of Commission clearly opposes the proposed Central Bench District or any other future expansion of CCDC's Project areas in the City of Boise. Please provide us a detailed accounting of CCDC's annual expenditure of ACHD increment funds that CCDC receives for each Project Area for the last five (5) years. Please let us know if you would like to discuss these issues in more detail.

Very truly yours,
ADA COUNTY HIGHWAY DISTRICT



Rebecca Arnold
President, ACHD Board of Commissioners

Cc: Chuck Winder, Mike Moyle, Jim Rice, Jason Monks, Joe Palmer, Melissa Wintrow
Enclosures